



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
MC:4920:DAL:OS
1100 Commerce St.
Dallas, TX 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201035029**

Release Date: 9/3/10

May 22, 2010

LEGEND

ORG - Organization name
XX = Date Address = address

Form Number:
Tax Year Ended: December 31, 20XX
Taxpayer Identification Number:
Person to Contact:
Employee Identification Number:
Contact Telephone Number:
In Reply Refer to: TE/GE Review Staff

ORG
ADDRESS

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: August 20, 20XX

Dear

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX. You agreed to this adverse determination, by signing Form 6018, on December 09, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. section 501(c)(3) and exempt under section 501(a) must be organized and operated exclusively for an exempt purposes. You have ceased operating as an exempt organization and providing any activities of any kind. ORG also is not a charitable organization within the meaning of Treasury Regulations section 1.501(c)(3)-1(d). You have not established that you have operated exclusively for an exempt purpose since beginning of January 1, 20XX when Organization ceased all operations and activities.

Based upon these reasons, we are retroactively revoking your IRC §501(c)(3) tax exempt status effective for all years beginning on or after January 1, 20XX.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file federal income tax returns on Form 1120, U.S. Corporation Income Tax Return, for the years ended December 31, 20XX, and for all years thereafter with the appropriate Service Center immediately and by the due date of Form 1120 for all subsequent years.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling (313) 628-3670 or writing to:

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate state officials of this action, as required by IRC §6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service

Department of the Treasury
1100 Commerce Street
Dallas, TX 75242

Date: December 3, 2009

OEG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer		Year/Period Ended
ORG	EIN:	December 31, 20XX
		December 31, 20XX

LEGEND

ORG = Organization name XX = Date State = state

Issue:

Whether the above named Private, Non-Operating Foundation continues to qualify for exemption under Section 501(c) (3) of the Internal Revenue Code?

Facts:

The foundation is organized as a trust and was created by its founders by filing a trust agreement with the State of State on July 13, 20XX. The trust was created exclusively for charitable, religious, scientific, literary and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under 501(c)(3) of the Internal Revenue Code.

The foundation was granted a favorable determination as a Private Non-Operating Foundation, exempt under IRC section 501(c)(3), by the Internal Revenue Service ("Service") on March 7, 20XX and effective for tax year ending December 31, 20XX.

The foundation's Forms 990-PF for tax years ending December 31, 20XX and December 31, 20XX were selected for examination based on information obtained from a promoter regarding potential abusive trusts. Prior to the start of the examination process, the foundation had not filed its Forms 990-PF, as required, for the two years under review.

Upon initial contact, representatives of the foundation expressed their interest in terminating the exempt status of the foundation, based on their claims that all of the foundation's assets had been fully distributed to qualified organizations during tax year ending December 31, 20XX and the foundation has received no additional funding or conducted no exempt activities during any of the subsequent tax years.

Based on a review of the foundation's books and records, the Service was able to confirm the representative's claims that operations were ceased and all remaining assets were disbursed to qualified 501(c)(3) organizations at the conclusion of the 20XX tax year. However, specific exemption details of the grant recipients, such as their foundation status and/or effective date of exemption, was not presented for review.

As a result, the Service requested that the foundation provide the appropriate returns and documentation required in order to complete the process of terminating its private foundation status, as provided in I.R.C. Section 507(b).

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG EIN:		Year/Period Ended December 31, 20XX December 31, 20XX

In response, the foundation submitted the requested delinquent and final Forms 990-PF for years under review. However, it failed to provide all of the documentation necessary to satisfy the notification requirements for termination, despite multiple attempts by the Service to obtain this documentation

Applicable Law:

IRC Section 507 (a) provides that, except as provided in § 507 (b), the status of any organization as a private foundation shall be terminated only if (1) such organization notifies the Secretary of its intent to accomplish such termination, or (2) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to a liability for tax under chapter 42, and the Secretary notifies such organization that it is liable for the tax imposed by § 507 (c). Under § 507 (a) (1) and (2), the organization's private foundation status is terminated when the organization pays the tax imposed by § 507 (c) or the entire amount of such tax is abated under § 507 (g).

IRC Section 507 (b) (1) (A) provides that the private foundation status of any organization, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to a liability for tax under chapter 42, shall be terminated, if the private foundation distributes all its net assets to one or more organizations described in § 170 (b)(1)(A) (other than clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution.

Treasury Regulation Section 1.507-2 (a) (1) provides in part that a termination made under § 507 (b) (1) (A), a private foundation is not required to give the notification described in § 507(a) (1), does not incur tax under §507(c) and no abatement of such tax under §507(g) is required.

IRC Section 507 (c) imposes a tax on each organization whose private foundation status is voluntarily or involuntarily terminated under § 507(a). The tax imposed is the lower of (1) the amount that the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the § 501(c) (3) status of such foundation, or (2) the value of the net assets of the foundation.

Treasury Regulation Section 1.507-1 (b) (1) provides that in order to terminate its private foundation status under § 507(a)(1), an organization must submit a statement to the Manager, Exempt Organizations Determinations, Tax Exempt and Government Entities Division (TE/GE), of its intent to terminate its private foundation status under § 507(a)(1). Such statement must set forth in detail the computation and amount of tax imposed under § 507(c).

Treasury Regulation Section 1.507-2 (a) (1) provides in part that a termination made under § 507 (b) (1) (A), a private foundation is not required to give the notification described in § 507(a) (1), does not incur tax under §507(c) and no abatement of such tax under §507(g) is required.

Treasury Regulation Section 1.507-1(b) (7) provides that a transfer of all the assets of a private foundation does not result in a termination of the transferor private foundation under § 507(a),

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unless the transferor private foundation elects to terminate pursuant to § 507(a) (1), or § 507(a) (2) is applicable.

Rev. Rul. 20XX-13, 20XX-1 C.B. 305 provides that if a private foundation distributes all its net assets to one or more public charities, at least one of which is described in § 509(a) (1) and has been so described for fewer than 60 calendar months immediately preceding the distribution or is described in §§ 509(a) (2) or (3), then the rules of § 507 (b) (1) (A) do not apply. In this case, the distributions do not cause the private foundation to terminate its private foundation status. See § 1.507-1 (b) (7). The private foundation may choose to terminate its private foundation status by submitting a statement of its intent to terminate its private foundation status under § 507(a) (1) to the Manager, Exempt Organizations Determinations, Tax Exempt and Government Entities Division (TE/GE). Such statement must set forth in detail the computation and amount of tax imposed under § 507(c). If the private foundation has no net assets on the day it provides notice (e.g., it provides notice at least one day after it distributes all its net assets), the tax imposed by § 507(c) will be zero. A submission of a Form 990-PF marked "Final" does not constitute notice of termination of private foundation status under § 507(a) (1).

IRC Section 501(c)(3) provides tax exemption for corporations and foundations that are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Taxpayer's Position:

The organization agreed to the proposed revocation of its exempt status under I.R.C. section 501(c) (3) by executing a Form 6018 dated December 9, 20XX.

Government's Position:

As provided in IRC Section 507(b)(1)(A), in order for a private foundation to terminate its exempt status without a notification requirement, it must distribute all of its all its net assets to one or more

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organizations described in § 170 (b)(1)(A) (other than clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution.

The foundation did not adequately substantiate that all of the recipients who received the foundation's final distribution net assets were in existence for a continuous period of at least 60 months prior to the final distribution. Therefore, the foundation failed to meet requirements for terminating its exempt status under IRC Section 507(b)(1)(A).

As a result, the factors in this case become similar to those described in Rev. Rul. 20XX-13, where as the distribution of net assets did not result in the termination of the foundation's exempt status. Therefore, in order for the foundation to terminate its private foundation status, it must submit a statement of its intent to terminate its private foundation status under § 507(a)(1) to the Manager, Exempt Organizations Determinations, Tax Exempt and Government Entities Division (TE/GE) and the statement must set forth in detail the computation and amount of tax imposed under § 507(c).

The foundation did submit a final Form 990-PF for tax year ending December 31, 20XX. However, Rev. Rul. 20XX-13 also provides that a submission of a Form 990-PF marked "Final" does not constitute notice of termination of private foundation status under § 507(a)(1).

The organization has thus failed to meet the notification requirements for terminating its private foundation status under § 507(a)(1).

As stated in Treasury Regulation Section 1.501(c)(3)-1(c)(1), "an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3)."

Because the foundation has not operated since distributing all of its assets to qualified Section 501(c)(3) organizations and filing its final Form 990-PF for tax year ending December 31, 20XX, it clearly is not engaging primarily in activities that accomplish an exempt purpose under IRC Section 501(c)(3). Therefore, this foundation continuously failed to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c)(1) beginning with the 20XX tax year..

Based on our review of all facts and circumstances and the legislative support referenced above, it is the government's position that this foundation's exempt status should be revoked because it is no longer operated for an exclusive exempt purpose as required by I.R.C. Section 501(c)(3).

Conclusion:

The foundation referenced above does not meet the operational test under IRC Section 501(c)(3) and its exemption as private foundation should be revoked effective January 1, 20XX.